

Where Do SB 317 and SB 233 Conflict?

EXHIBIT 4
DATE 3/20/2011
SB 317

SB 317

Section 1. Section 75-1-102, MCA, is amended to read:

"75-1-102. Intent -- purpose. (1) The legislature, mindful of ~~its constitutional obligations under individuals'~~ fundamental constitutional rights enumerated in Article II, section 3, and its constitutional obligations under Article IX of the Montana constitution to provide for the administration, enforcement, and protection of these rights, has enacted the Montana Environmental Policy Act ~~to be implemented in conjunction with substantive environmental regulatory laws that the legislature has also provided for the administration, enforcement, and protection of these rights.~~ The Montana Environmental Policy Act is procedural, ~~and it only,~~ requiring a state agency with jurisdiction over a proposed state action to conduct an environmental review of a proposed action by performing the reasonable and timely compilation, analysis, ~~and disclosure to the public of existing, publicly available, relevant information directly concerning the reasonably foreseeable environmental and,~~ FOR AN ENVIRONMENTAL REVIEW PREPARED PURSUANT TO 75-1-201(3), economic impacts of the proposed state action. It is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that reasonably foreseeable environmental and, FOR AN ENVIRONMENTAL REVIEW PREPARED PURSUANT TO 75-1-201(3), economic attributes are ~~fully considered adequately understood, analyzed, and disclosed by state agencies when taking a state action and that the public and the legislature are provided access to this information.~~

(2) (a) The purpose of parts 1 through 3 of this chapter is to: ~~declare a state policy that will~~

(i) establish an environmental quality council;

(ii) guide courts in the review of final agency actions under parts 1 through 3 of this chapter;

(iii) encourage productive, economically healthy, free enterprise and enjoyable harmony between humans and their environment, to protect by protecting the right to use and enjoy private property and pursue life's basic necessities free of undue government regulation; to

(iv) promote efforts that will moderate, prevent, or eliminate damage to the environment and biosphere and stimulate unreasonable depletion and degradation of natural resources and the environmental life support system while also protecting and enhancing the health and welfare of humans, including their economic welfare, by protecting the right to a clean and healthful environment; and to

(v) enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council of the state, while facilitating natural resource development and use.

(b) It is not the purpose of parts 1 through 3 of this chapter to provide, enhance, or supplement any regulatory authority of any state agency beyond that explicitly provided in other statutes.

(c) The legislature finds and declares the accomplishment of these purposes to be vital to the moral and material well-being of the people of Montana."

SB 233

Section 1. Section 75-1-102, MCA, is amended to read:

"75-1-102. Intent -- purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that:

(a) environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations; and

(b) the public is informed of the anticipated impacts in Montana of potential state actions.

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

(3) (a) The purpose of requiring an environmental assessment and an environmental impact statement under part 2 of this chapter is to assist the legislature in determining whether laws are adequate to address impacts to Montana's environment and to inform the public AND PUBLIC OFFICIALS of potential impacts resulting from decisions made by state agencies.

(b) Except to the extent that an applicant agrees to the incorporation of measures in a permit pursuant to 75-1-201(6)(b), it is not the purpose of parts 1 through 3 of this chapter to provide for regulatory authority, beyond authority explicitly provided for in existing statute, to a state agency.

CODE

Purple	Alternatives analysis
	State sponsored project
	Analysis of impacts beyond Montana's borders
Grey	Judicial remedy
Brown	Limitations on the analysis

SB 317

Section 8. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions -- environmental impact statements -- alternative analyses -- judicial review and remedies. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach to undertake the reasonable and timely compilation, analysis, and disclosure of existing, publicly available, relevant information directly concerning the reasonably foreseeable environmental and economic impacts of a proposed state action AND THE ENVIRONMENTAL AND ECONOMIC IMPACTS OF MAJOR ACTIONS OF STATE GOVERNMENT PURSUANT TO SUBSECTION (3) that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment analyzing environmental and economic impacts of the proposed state action AND THE ENVIRONMENTAL AND ECONOMIC IMPACTS OF MAJOR ACTIONS OF STATE GOVERNMENT PURSUANT TO SUBSECTION (3); and

~~(B) that in any environmental review that is not subject to subsection (1)(b)(iii) when an agency considers an alternative, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(D) through (1)(b)(iv)(C)(VII) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);~~

(B) that the information and analysis resulting from this process are made available to the public, state agencies, and the legislature for planning and decisionmaking not related to the issuance, denial, modification, or conditioning of a permit or an authority to act that may have an impact on the human environment by projects in Montana;

(ii) identify and develop methods and procedures that will ensure that presently unquantified impacts on economic and environmental amenities and values may be are given appropriate consideration in decisionmaking, along with economic and technical considerations analysis and disclosure PURSUANT TO SUBSECTION (1)(B)(I);

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment in Montana are evaluated for regulatory restrictions on private property, as provided in subsection ~~(1)(b)(iv)(D)~~ (3)(e) (3)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

— (A) the environmental impact of the proposed action;

— (B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

— (C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

— (I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

— (II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

— (III) if the project sponsor believes that an alternative is not reasonable as provided in subsection ~~(1)(b)(iv)(C)(I)~~, the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and

completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

—(IV) the agency shall complete a meaningful no action alternative analysis. The no action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

—(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

—(E) the relationship between local short term uses of the human environment and the maintenance and enhancement of long term productivity;

—(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

—(G) the customer fiscal impact analysis, if required by 69-2-216; and

—(H) the details of the beneficial aspects of the proposed project, both short term and long term, and the economic advantages and disadvantages of the proposal;

—(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

—(vi) recognize the national and long range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

—(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

—(viii) initiate and use ecological information in the planning and development of resource oriented projects; and

—(ix) assist the environmental quality council established by 5-16-101;

—(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and with any local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

—(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

—(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

—(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.

—(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

(iv) recognize the long-range character of environmental and economic impacts in Montana;

(v) make available to counties, municipalities, institutions, and individuals information obtained pursuant to parts 1 through 3; and

(vi) assist the environmental quality council established in 5-16-101-; AND

(VII) INITIATE AND USE ECOLOGICAL INFORMATION IN THE PLANNING AND DEVELOPMENT OF RESOURCE-ORIENTED

(2) (a) In an environmental review under parts 1 through 3, except as provided in subsections (2)(b), (2)(c), and (2)(d), (3)(b) or unless otherwise required by another statute under which an agency regulates, AUTHORIZED AND WITHIN THE SCOPE OF AN AGENCY'S AUTHORITY TO CONSIDER ALTERNATIVES UNDER THE SUBSTANTIVE REGULATORY ACT UNDER WHICH IT IS REGULATING THE PROPOSED ACTION, an agency may not analyze an alternative to the proposed action, EXCEPT AS PROVIDED IN THIS SECTION. However, an agency may suggest reasonable alternatives for study to the project sponsor.

(b) A project sponsor may:

(i) agree to the analysis of a reasonable alternative suggested by the agency; and

(ii) request that the environmental review analyze reasonable alternatives to the proposal. Only those alternatives that the project sponsor agrees to or requests may be analyzed, and the agency may decline to analyze any alternative.

(c) If the state agency is a project sponsor, the Environmental Review must analyze the proposed action and those alternatives the agency develops that are reasonable pursuant to subsection (2)(b), (3)(c).

(d) A state agency may not analyze an alternative that fails to comply with the criteria in subsection (2)(b), (3)(c).

(3) Each environmental review of proposals for projects, programs, and other major actions of state government that will significantly affect the quality of the human environment in Montana must include:

(a) a detailed statement of the reasonably foreseeable environmental and economic impacts of the proposed action in Montana; AN AGENCY MAY CONDUCT ORIGINAL SCIENTIFIC STUDIES ONLY IF:

(I) THE SUBJECT OF THE STUDY IS DIRECTLY RELEVANT TO THE IMPACTS OF THE PROJECT AT ISSUE AND THE AGENCY HAS THE AUTHORITY TO REGULATE THE APPLICANT IN REGARD TO THAT SUBJECT UNDER THE SUBSTANTIVE REGULATORY ACT UNDER WHICH THE AGENCY IS PROCEEDING; AND

(II) THE AGENCY DIRECTOR, NOT A DESIGNEE, MAKES A FINDING THAT THE CONDITIONS IN SUBSECTION (3)(A)(I) ARE MET AND AN ANALYSIS OF THE REASONABLY FORESEEABLE ENVIRONMENTAL IMPACTS DETERMINED BASED ON EXISTING, PUBLICLY AVAILABLE INFORMATION CANNOT BE ADEQUATELY COMPLETED WITHOUT THE PROPOSED ORIGINAL SCIENTIFIC STUDY. IF THE AGENCY DIRECTOR MAKES A FINDING UNDER THIS SUBSECTION (3)(A)(II) REQUIRING THE AGENCY TO UNDERTAKE A STUDY, THIS FINDING IS IMMEDIATELY REVIEWABLE IN DISTRICT COURT. THE AGENCY MAY CHARGE THE PROJECT SPONSOR FOR ITS ACTIVITIES ASSOCIATED WITH ORIGINAL SCIENTIFIC STUDIES CONDUCTED IN ACCORDANCE WITH THIS SUBSECTION (3)(A).

(B) A STATEMENT OF THE REASONABLY FORESEEABLE ECONOMIC IMPACTS OF THE PROPOSED ACTION IN MONTANA, BASED ON INFORMATION IN THE RECORD AND OTHER PUBLICLY AVAILABLE ECONOMIC INFORMATION THAT THE AGENCY, IN ITS SOLE DISCRETION, DECIDES TO GATHER AND ANALYZE;

(C) subject to subsection (2)(b), a statement of the reasonable alternatives, if any, to the proposed action analyzed in the environmental review. A reasonable alternative eligible to be analyzed in the environmental review must:

(i) be within the legal authority of an applicant to perform or a state agency to permit the applicant to perform; and allow the sponsor to achieve the goals of its project in the reasonable time;

(ii) be achievable using currently existing commercially available processes and technology; and

(iii) be economically feasible as determined solely by the economic viability of the project or similar projects under similar conditions and physical locations without regard to the economic strength of the specific project sponsor.

(e)(D) a statement of any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (3)(e) (3)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(d)(E) a statement of the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(e)(F) a statement of any irreversible and irretrievable commitments of resources that would be involved if the proposed action is implemented;

(f)(G) a statement of the customer fiscal impact analysis if required by 69-2-216;

(g)(H) a statement of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(h)(I) a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impacts of the project's noncompletion.

(i)(J) a statement that the state action is a major state action requiring an environmental and economic review complying with this section.

(4)(a) If an agency determines that it is appropriate, an environmental review may contain a statement of probable, quantifiable impacts beyond Montana's borders. Consideration of environmental impacts related to greenhouse gases must be limited to disclosure of reasonably anticipated, quantifiable emissions of those gases arising from the state action at issue stated in proportion to the existing and reasonably anticipated, quantifiable emissions of those gases from all other sources.

(b) The adequacy of the statement in subsection (4)(a) or a decision not to include the statement is not subject to judicial review and may not be the basis of any judicial relief.

As part of the project, sponsor does not agree to the analysis of an alternative, the agency may not charge the project sponsor for any of its activities associated with that alternative.

(b) (i) The time limits established for an environmental and economic review that is not subject to the provisions of subsection (3) may not be extended, except with the project sponsor's agreement.

(ii) The time limits in 75-1-208 for an environmental review subject to the provisions of subsection (3) may be extended for 60 days without agreement of the project sponsor. An extension beyond an initial 60 days requires the project sponsor's agreement.

(6) Prior to making a detailed statement as provided in subsection (3), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and with any local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the agency review processes.

(7) A transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or for permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (3) unless there is a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(8) The compilation, analysis, research, study, or other regulatory process performed in response to an application for a lease, permit, license, certificate, or other entitlement for use or for permission to act by an agency that is the functional equivalent of any part of an environmental review conducted under parts 1 through 3, including public notice and comment, must be incorporated in the environmental and economic review, is considered to be in compliance with the requirements of parts 1 through 3, and may not be duplicated.

(9) Each agency subject to the provisions of parts 1 through 3 shall adopt by rule a listing of categorically excluded actions.

(10) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(11) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review pursuant to subsection (3) is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to the court the certified record of its decision at issue, and except as provided in subsection (11)(b), the person challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the record.

(ii) Except as provided in subsection (11)(b), in a challenge to the agency's decision or the adequacy of an environmental review, a court may not consider any information, including but not limited to an issue, comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

(iii) Except as provided in subsection (11)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

(iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the agency's decision.

(b) (i) When a party challenging the decision or the adequacy of the environmental review or decision presents information not in the record certified by the agency, the challenging party shall certify under oath in an affidavit that the information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

(ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to the agency for the agency's consideration and an opportunity to modify its decision or environmental review before the court considers the evidence as a part of the administrative record under review.

(iii) If the court finds that the information in the affidavit does not meet the requirements of subsection (11)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its decision.

(c) (i) The remedies provided in this section for successful challenges to a decision of the agency or the adequacy of the statement are exclusive.

(ii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent injunction, or other equitable relief may not enjoin the issuance or effectiveness of a license or permit or a part of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction, a permanent injunction, or other equitable relief, that the:

(A) party requesting the relief will suffer irreparable harm in the absence of the relief;

(B) issuance of the relief is in the public interest. In determining whether the grant of the relief is in the public interest, a court:

(I) may not consider the legal nature or character of any party; and

(II) shall consider the implications of the relief on the local and state economy and make written findings with respect to both.

(C) relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and the irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the extent possible, that the project or as much of the project as possible can go forward while also providing the relief to which the applicant has been determined to be entitled.

(d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the case. If the party seeking an injunction or a temporary restraining order objects to the amount of the written undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit with the court that states the party's income, assets, and liabilities in order to facilitate the court's consideration of the amount of the written undertaking that is required. The affidavit must be served on the party enjoined.

(e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the state as a matter of right if the individual or entity has not been named as a defendant.

(f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3.

(12) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental review or any severable portion of an environmental review within the state's jurisdiction that is being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National Environmental Policy Act.

(5) (a)(13) (a) The agency may not withhold, delay, deny, or impose conditions on any existing or requested lease, permit, license, certificate, or other entitlement or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) (13) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a lease, permit, license, certificate, or other entitlement or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(14) Parts 1 through 3 of this chapter do not:

(a) affect an agency's authority or obligations under any other statute; or

(b) confer authority to an agency to require the amendment or modification of an existing or proposed project or action or to condition a lease, permit, license, certificate, or other entitlement or authority to act that is a state action being reviewed pursuant to parts 1 through 3 of this chapter.

~~(6) (a) (i)~~ (15) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court ~~or in federal court, whichever is appropriate.~~

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ (15)(a)(ii) ~~must take~~ takes precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ (15)(a) involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

~~(7)(16)~~ The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection ~~(1)(b)(iv)~~ (3) or any recommendation that a determination of significance be made.

~~(8)(17)~~ A project sponsor may request a review of the significance determination or recommendation made under subsection ~~(7)~~ (16) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

SB 233

Section 2. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions -- environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection (2) subsections (2) and (3)~~, shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking [REDACTED] that may have an impact on the Montana human environment by projects in Montana; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through ~~(1)(b)(iv)(C)(III)~~ and (1)(b)(iv)(C)(II) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection ~~(1)(b)(iv)(C)(IV)~~ (1)(b)(iv)(C)(III);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking [REDACTED], along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment in Montana are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment in Montana a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects on Montana's environment that cannot be avoided if the proposal is implemented;

[REDACTED] alternative to the proposed action. An analysis of any alternative included in the environmental review must

[REDACTED] and the following:

[REDACTED] and be reasonable in that the alternative must be achievable under current

[REDACTED] and the project sponsor must be able to determine the economic viability of

[REDACTED] and the project sponsor must be able to determine the economic viability of

[REDACTED] and the project sponsor must be able to determine the economic viability of

[REDACTED] and the project sponsor must be able to determine the economic viability of

[REDACTED] and the project sponsor must be able to determine the economic viability of

~~(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.~~

~~(IV)(III) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.~~

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the Montana human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

[REDACTED] in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate

[REDACTED] alternatives to recommend, state, or reject in any proposal that involves a project or activity that may

alternative uses of available resources. If the alternatives analysis is conducted for a project that is not a [REDACTED] and alternatives are recommended, the project sponsor may voluntarily implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection (6)(b) to a specific course of action.

(vi) recognize the national and potential long-range character of environmental problems impacts in Montana and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world Montana's environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the Montana's environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the legislature and the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in Montana and with any Montana local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency in Montana with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

~~(2) A STATE EXCEPT AS PROVIDED IN SUBSECTION (2)(B), AN ENVIRONMENTAL REVIEW CONDUCTED PURSUANT TO SUBSECTION (1) MAY NOT INCLUDE A REVIEW OF ACTUAL OR POTENTIAL IMPACTS BEYOND MONTANA'S BORDERS. IT MAY NOT INCLUDE ACTUAL OR POTENTIAL IMPACTS THAT ARE REGIONAL, NATIONAL, OR GLOBAL IN NATURE.~~

~~(B) AN ENVIRONMENTAL REVIEW CONDUCTED PURSUANT TO SUBSECTION (1) MAY INCLUDE A REVIEW OF ACTUAL OR POTENTIAL IMPACTS BEYOND MONTANA'S BORDERS IF IT IS CONDUCTED BY~~

~~THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR THE MANAGEMENT OF WILDLIFE~~
~~OR AN AGENCY REVIEWING AN APPLICATION FOR A PROJECT THAT IS NOT A~~
~~TO THE EXTENT THAT THE REVIEW IS REQUIRED BY LAW, RULE, OR~~
~~REGULATION OR~~

~~AND BY A STATE AGENCY AND A FEDERAL AGENCY TO THE EXTENT THE REVIEW IS REQUIRED BY THE FEDERAL AGENCY.~~

(2)(3) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3)(4) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b) (4)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision environmental review document before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

~~(4)(5)~~ To the extent that the requirements of ~~subsections~~ subsection (1)(b)(iv)(C)(I) and ~~(1)(b)(iv)(C)(III)~~ are inconsistent with federal requirements, the requirements of ~~subsections~~ subsection (1)(b)(iv)(C)(I) and ~~(1)(b)(iv)(C)(III)~~ do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

~~(5)(6)~~ (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection ~~(5)~~ (6) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

~~(6)(7)~~ (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ (7)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ (7)(a) involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(d) The remedy in any action brought for failure to comply with or for inadequate compliance with a requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the environmental review conducted pursuant to subsection (1).

(e) A permit, license, lease, or other authorization issued by an agency is valid and may not be enjoined, voided, nullified, revoked, modified, or suspended pending the completion of an environmental review that may be remanded by a court.

~~(7)(8)~~ The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

~~(8)(9)~~ A project sponsor may request a review of the significance determination or recommendation made under subsection ~~(7)~~ (8) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

SB 233

Section 4. Section 75-1-220, MCA, is amended to read:

"75-1-220. **Definitions.** For the purposes of this part, the following definitions apply:

(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a [REDACTED], it does not include an alternative facility or an alternative to the proposed project itself. THE TERM INCLUDES ALTERNATIVES REQUIRED PURSUANT TO TITLE 75, CHAPTER 20.

(1)(2) "Appropriate board" means, for administrative actions taken under this part by the:

- (a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;
- (b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in 2-15-3402;
- (c) department of transportation, the transportation commission, as provided for in 2-15-2502;
- (d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;
- (e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and
- (f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(2)(3) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(3)(4) "Cumulative impacts" means the collective impacts on the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(4)(5) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.

(5)(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 329).

(6)(7) "Public scoping process" means any process to determine the scope of an environmental review.